IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATIONS NO. 169 and 170 of 2004.

Criminal Misc. Application No. 169 of 2004.

Rajesh Chowbay,
resident of Margao, Goa. ... Applicant.

Versus

State,
Through the Public Prosecutor,
Panaji, Goa. ... Respondent.

Criminal Misc. Application No. 170 of 2004.

Ramanand Pandey,
resident of Margao, Goa. ... Applicant.

Versus

State,
Through the Public Prosecutor,
Panaji, Goa. ... Respondent.

Shri S.G. Bhobe, Advocate for the Applicants.

Shri S.N. Sardessai, Public Prosecutor for the State/Respondent.

CORAM: N.A. BRITTO, J.

DATE: 13TH AUGUST, 2004.

ORAL ORDER:

The applicants herein are accused in Sessions Case No. 18/2004 against whom charge under Sections 302, 201 r/w Section 34 I.P.C. has been framed by the learned Sessions Judge, Margao and the case is pending trial. Their applications for bail have been rejected by a common Order of the learned Sessions Judge dated 14.7.2004.

2. The allegation against both the said applicants-accused is that on 17.3.2004 at about 18.30 hrs. both the accused in furtherance of common intention stabbed the deceased Raj Kumar Soni, aged about 23 years with a knife at his back, thereby causing instantaneous death.

3. There is no dispute that the incident took place in the premises of Vidhya Marketing Service situated at Anand Bhavan Building at Station Road, Margao, which establishment was owned by the Accused No.1 Ramanand Pandey. There is also no dispute that A.2 Rajesh Chowbay is his brother-in-law as well as salesman of the said Ramanand Pandey and the deceased was his ex-salesman.

4. The learned Sessions Judge, after perusing the material, on record, came to the conclusion that there was prima facie evidence on record to show that both the accused had committed an offence punishable under Section 302 r/w S.34 I.P.C. Likewise, the learned Sessions Judge also came to the conclusion that the offence committed by both the accused was serious in nature. The learned Sessions Judge also felt that both the accused being natives of the State of Uttar Pradesh

may not be available for trial and, as such there was also possibility of the accused jumping bail.

5. At the time of hearing of arguments in these bail applications, it has been submitted that the said establishment is being presently run by one of the brothers of the Accused No.1 Ramanand.

6. It is the submission of Shri Sardessai, the learned P.P. that since the charge against both the accused has been framed under S.302 r/w S.34 I.P.C. , the accused would not be entitled to bail, the said offence being punishable either with death or with imprisonment for life.

7. On the other hand, Shri Bhobe, the learned counsel on behalf of the accused has submitted that it is the nature of the offence which has got to be considered and when considered in the light of the statements recorded, it could not be said that the crime committed by the accused was heinous and therefore the accused deserve to be admitted to bail. Regarding the availability of the accused for trial, Shri Bhobe has submitted that both the accused are residents of Margao for the last about seven years and their availability otherwise would be secured by imposing suitable conditions.

8. Shri Sardessai has placed reliance on the case of **Kalhan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Anr. [2004 (3) Crimes 63 (SC)].** In this case the law regarding the grant or refusal of bail

has been reiterated by the Hon'ble Supreme Court. The Supreme Court has stated that the Court is required to consider the following factors before granting bail:-

"(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

(b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

© Prima facie satisfaction of the Court in support of the charge."

9. The statements of important witnesses were read at the time of arguments with the assistance of Shri Bhobe, the learned counsel of the accused as well as Shri Sardessai, the learned P.P. There is no dispute in this case that the first information came to be lodged by none other than the Officer-in-Charge of the Police Station who received the message from Head Constable, Buckle No.3152. Although it was claimed that Shiraj Ahmed Bedgui and Farokh Ahmed Ibrahim were the eye witnesses, a perusal of their statements do not show that they are in fact eye witnesses. The only eye witness appears to be one salesman by name Manoj Kumar whose statement, it also appears has already been recorded under S.164 of the Code of Criminal Procedure, 1973.. According to the said Manoj Kumar Pandey, A.2 Rajesh Chowbay came

from sales work and had an argument with the deceased. As the deceased was sitting and conversing with A.1 Ramanand regarding money and was making 'dadagiri' with the said A.1 Ramanand, at which time A.2 Rajesh hit the deceased Raj Kumar Soni on the rear side of his head and then the deceased got up from the seat where he was sitting and removed the knife and went to assault A.2 Rajesh and Rajesh held the knife in his right hand and had a scuffle with him and at this time A.1 Ramanand got up, held the knife and snatched it from the hand of the deceased and stabbed him on his back while the scuffle between Rajesh and Raj Kumar was going on.

10. The medical certificate of A.2 Rajesh Chowbay issued by Dr. Gracias Nursing Home shows that A.2 Rajesh had a clear cut wound over the joint of index finger with tendon rupture. The post mortem report of deceased Raj Kumar Soni shows that besides a bruise, a laceration and abrasion, the deceased had a stab penetrating wound which had gone into the left pleural cavitity cutting the left lower lobe vertically to a length of about 3-1/2 cms.

11. In my view, the fact that a charge under Section 302 r/w Section 34 I.P.C. has been framed against the accused, cannot be in itself a reason good enough to deny bail to the accused. As has been pointed out from time to time by the Supreme Court, what has to be looked into at the time of granting bail is the gravity of the offence, the severity of the punishment as well as the nature of the evidence which has been

collected by the prosecution. If the allegations as reflected from the statements recorded are accepted at their face value, and they are to be accepted at this stage, they show that the charge against A.1 Rajesh is not at all grave and being so the punishment which he may be liable also does not appear to be very severe. Considering the facts, as far as A.1 Rajesh is concerned, in my view bail could not have been denied to him. But the same could not be said of A.2 because, it is he who inflicted on the deceased a deep penetrating injury which caused his instant death. The intention can develop on the spur of the moment.

12. As far as the allegation that the accused will not be available for trial appears to be more imaginary than real, considering that both the accused were otherwise residents of the locality and have been carrying on business in Margao and probably in the surrounding areas.

13. In the light of what has been stated hereinabove, I am inclined to admit A.2 Rajesh to bail. He shall be released on bail, upon execution of a Bond of Rs.15,000/- with one surety in the like amount to the satisfaction of the learned Sessions Judge, Margao. Before A.2 Rajesh is released on bail, A.2 shall also furnish his address in Margao and Uttar Pradesh where the process of the Court could be served upon him. A.2 Rajesh is also directed not to leave the State of Goa without prior permission of the learned Sessions Judge, Margao.

14. The application for bail of A.1 Ramanand is hereby rejected.

N. A. BRITTO, J.

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